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AZ CORP COMMISSION
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IN THE MATTER OF THE FORMAL
COMPLAINT OF ACCIPITER
COMMUNICATIONS, INC., AGAINST
VISTANCIA COMMUNICATIONS, L.L.C.,
SHEA SUNBELT PLEASANT POINT, L.L.C.,
AND COX ARIZONA TELCOM, LLC.

DOCKET NO. T-03471A-05-0064

NOTICE OF FILING

Pursuant to the February 13, 2006 Procedural Order, Cox Arizona Telcom, LLC ("Cox")
hereby files its responses to Staff's 12th set of data requests in this docket.

RESPECTFULLY SUBMITTED this 9th day of May 2006.

COX ARIZONA TELCOM, LLC.

By

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Original and 13 copies of the foregoing
filed this 9th day of May 2006 with:

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2 this 9th day of May 2006 to:

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COX ARIZONA TELCOM, LLC
RESPONSES TO
STAFF'S TWELFTH SET OF DATA REQUESTS
Docket No. T-03471A-05-0064
May 9, 2006

The following requests pertain to the Testimony of Ivan Johnson filed 4/5/06:

STF 12.1 Referring to page 3, lines 26-27 – Since the date the Settlement Agreement was signed, has Cox allowed to be distributed to buyers, potential buyers or builders any literature or other forms of marketing material (including media advertisements) or allowed any signage to be displayed, that references Cox as being the preferred, selected or exclusive telecommunications provider at Vistancia? If the response is in the affirmative, please explain.

RESPONSE: Cox objects to this request as vague and ambiguous and overbroad. Notwithstanding those objections and without waiving same, Cox does not believe such marketing materials are being distributed to buyers, potential buyers or builders or that there is any such signage at Vistancia. Nor has Cox been informed of any such activities by Accipiter. However, Cox does not know every communication made by home builders or their agents to buyers or potential buyers.

RESPONDENT: Cox Legal

COX ARIZONA TELCOM, LLC
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STF 12.2 Referring to page 4, lines 9-11 – Since the Company believes that Accipiter and other providers will be able to compete more fully in Vistancia without a preferred marking arrangement being in place, does the Company therefore believe that preferred marketing arrangements have the effect of limiting competition and consumer choice in developments such as Vistancia? Please explain the Company's response with specificity.

RESPONSE: Cox objects to this request as vague and ambiguous, argumentative, irrelevant and calls for a legal conclusion. Notwithstanding those objections and without waiving same, Cox states that preferred provider agreements do not limit competition and consumer choice and have been approved by the Commission. In the Commission decision approving the agreements, the Commission found, and Cox does not disagree, that the agreements "are reasonable, not anti-competitive because they do not prevent other carriers from serving potential customers in the developments, and therefore are in the public interest." See Decision No. 61626 at 5. Preferred provider agreements provide benefits to consumers and developers. See Direct Testimony of Ivan Johnson at 20. As with the agreements approved by the Commission, preferred provider agreements typically provide for exclusive marketing rights in the model homes, but do not restrict other forms of marketing

RESPONDENT: Ivan Johnson
 Cox Legal

COX ARIZONA TELCOM, LLC
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STF 12.3 Referring to page 5, lines 6-8 – Please explain with specificity why the Company believes services may not have been timely available to Vistancia residents if the Company had not agreed to the MUE arrangement.

RESPONSE: Cox objects to this request as vague and ambiguous. Notwithstanding those objections and without waiving same, Cox states that the City of Peoria approved the MUE. If Cox had refused to provide service to Vistancia in light of the approved MUE, Cox does not know when another carrier would have been able to provide such service, particularly since Qwest was transferring its CCN for a portion of Vistancia to Accipiter. Had Cox filed a legal challenge to the MUE, the litigation would have delayed service to the development.

RESPONDENT: Cox Legal

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STF 12.4 Referring to page 10, lines 21-23 – Please explain how the estimate of \$480,000 in savings to Accipiter was determined.

RESPONSE: See Attachment 12.4.

RESPONDENT: Cox Legal

ATTACHMENT

12.4

Value of Conduit Portion of Cox Settlement Proposal to Accipiter Communications

PROVISION OF CONDUIT (North of Dixeleta)

Cox agrees to provide to Accipiter (1) 2" conduit for approximately 95% - 98% of the areas identified and requested on the map provided to Cox by Accipiter of the Vistancia development. Total empty conduit provided to Accipiter will consist of approximately 65,989 feet in the areas originally requested. In addition, Cox has agreed to provide an additional 11,046 feet of empty conduit from Highway 303 to the entrance of the Vistancia development at Vistancia Boulevard. This additional request of Accipiter satisfies the entire request for access to empty conduit. With this additional conduit, the total footage provided is approximately 77,035 feet.

North of Dixeleta Alignment = 35,375 ft.

South of Dixeleta Alignment = 41,660 ft. (see valuation analysis for area south of Dixeleta below)

Source: Maricopa Assessor Interactive Maps
http://www.maricopa.gov/assessor/gisPortal/gis_portal.asp

Valuation of empty conduit placed North of the Dixeleta alignment during joint trench is approximately \$25,588

This figure is the Cox cost of empty conduit = \$0.7225/ft.

$(35,375 \times \$0.7225/\text{ft.} = \$25,588)$

| | |
|--|-------------------------------|
| Cost breakout of empty conduit includes: | conduit |
| | placement |
| | couplers |
| | average amount of sweeps |
| | jet line |
| | cement |
| | 15% length of conduit (waste) |

PROVISION OF CONDUIT (South of Dixeleta)

Value to Accipiter of not having to place conduit After the Fact (ATF) = \$404,607.

Background: Up until February 2005, Accipiter Communications could not have served customers in the southern part of the Vistancia development (approximately from the Dixeleta alignment south) due in part to Qwest having the authority to be the ILEC for that area. In February 2005, the ACC issued Decision No. 67574 authorizing the transfer of those sections comprising the southern portion of the Vistancia development to Accipiter. At that point in time, all joint trenching in the southern part of the development had been completed and paved over and had been for approximately a year or more.. For Accipiter to be able to serve any customers at the time authority was granted to them by the Commission, they would have been required to go in "after the fact" (ATF) to bore and trench to place conduit in those areas.

The cost to Cox to go in ATF to place conduit is approximately \$51,281/mile. There are approximately 7.89 miles (41,660 feet of conduit) south of the Dixeleta alignment that Accipiter would have been required to go through to place facilities ATF. This cost calculation is based on labor and materials and does NOT include any electronics or coaxial cable placed within the facilities.

$$\$51,281/\text{mile} \times 7.89 \text{ miles} = \$404,607$$

Valuation of Pothole and Repair of Conduit is approximately \$20,192

There are 90 vaults located throughout Vistancia with two potholes per vault:

- 36 vaults north of Dixeleta
- 54 vaults south of Dixeleta

Cox cost of Pothole and Repair of Conduit (cost to stub out conduit for Accipiter use) =
\$72/each side (\$144 each break)

Cost Breakout:

| | |
|--|----------|
| 90 vaults x \$144 Pothole and repair of conduit = | \$12,960 |
| 14ft 2" conduit extensions @ \$0.32/ft. x 90 vaults = | \$403 |
| (2) x 90 degree 36"R Sweeps @ \$3.08/ea x 90 vaults = | \$554 |
| (4) x 45 degree 24R Sweeps @ \$1.46/ea x 90 vaults = | \$526 |
| (2) x 2" Couplers @ \$0.44/ea x 90 vaults = | \$79 |
| Approximately 12 ft. of dirt trench @ \$5.25 x 90 vaults = | \$5,670 |

NOTE: Additional cost to repair and replace landscaping has not been included and can be provided by Vistancia.

Value of Engineering and Planning to Vistancia = \$38,000.

Cox personnel have spent considerable time to research how to reach the Vistancia development and then design and deploy facilities. This labor time and expense is something that Accipiter will not incur to the extent that Cox has already completed the layout for plant design within the Vistancia development.

The value placed on the planning and engineering for the Vistancia development consisted of hundreds of hours dedicated to fielding, RF design, fiber design, drafting and outside plant engineering. Approximately 1,520 hours of Cox personnel time has been spent on this project. Utilizing an average price of \$25/hr equates to a total cost of \$38,000. This additional value for engineering planning is part of the total valuation package that Accipiter will be receiving.

TOTAL Value Provided to Accipiter = \$488,387

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STF 12.5 Referring to page 14, lines 20-24, Since the Settlement Agreement is the Company obligated to do any form of revenue sharing with the developer? If the response is in the affirmative, please explain and state any benefit to Company.

RESPONSE: No.

RESPONDENT: Cox Legal

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STF 12.6 Referring to page 24, lines 12-13 – Please explain what the “other policies” consist of.

RESPONSE: Cox’s planned development account representatives are now encouraged to involve Cox regulatory personnel in circumstances where any novel arrangement is proposed for serving a development.

RESPONDENT: Cox Legal

COX ARIZONA TELCOM, LLC
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The following requests pertain to the Testimony of Linda Trickey filed 4/5/06:

STF 12.7 Referring to page 6, lines 19-21 and page 9, lines 6-9 – The original draft agreements between Cox and Shea provided for a \$2 million capital contribution from Shea to Cox when the easements for telecommunications were public. The final agreements between Cox and Shea provided for a \$3 million capital contribution from Shea to Cox and a payment of \$1 million from Cox to Shea when the easements for telecommunications were a MUE. Since the \$1 million increase in capital contribution offsets the \$1 million required for access to the MUE, is not the effect of the final agreements that Cox received access to the MUE at no cost to itself? Please explain your response with specificity.

RESPONSE: Cox objects that the request is argumentative. Notwithstanding this objection and without waiving same, see Response to STF 11.8.

RESPONDENT: Cox Legal

COX ARIZONA TELCOM, LLC
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STF 12.8 Referring to page 10, lines 7-9 – During any of your discussions with Lesa, did you ask for examples of other locations where a MUE arrangement had been used legally? If the response is yes, what examples were offered? If the response is no, why not?

RESPONSE: As set forth in Ms. Trickey's direct testimony, Lesa Storey assured that the MUE arrangement had been found to be legal when used elsewhere. Ms. Trickey does not recall specific details of her conversations with Lesa Storey, including specific conversations about where the MUE had previously been used and found to be legal.

RESPONDENT: Linda Trickey

COX ARIZONA TELCOM, LLC
RESPONSES TO
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STF 12.9 Referring to page 10, lines 7-9 – During your review of the documents pertaining to Vistancia, did anyone within the Cox family of Companies ask you for examples of other locations where a MUE arrangement had been used legally? If yes, please identify all such individuals and their job function.

RESPONSE: Cox objects that the request is vague and ambiguous as to the meaning of “Cox family of Companies,” it is vague as to time, and calls for information that is covered by the attorney-client privilege and/or work product doctrine.

RESPONDENT: Cox Legal

COX ARIZONA TELCOM, LLC
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STF 12.10 Referring to page 10, lines 7-9 – During your review of the documents pertaining to Vistancia, did anyone within the Cox family of Companies provide you with, or express knowledge of, examples of other locations where a MUE arrangement had been used legally? If yes, please identify all such individuals and their job function.

RESPONSE: Cox objects that the request is vague and ambiguous as to the meaning of “Cox family of Companies,” is vague as to time, and calls for information that is covered by the attorney-client privilege and/or work product.

RESPONDENT: Cox Legal

COX ARIZONA TELCOM, LLC
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STF 12.11 Referring to page 10, lines 17-19 – Why did knowledge that another carrier was threatening suit over the MUE arrangement not raise significant concern regarding the agreements you were reviewing? If it did raise concern, to whom within Cox was this concern communicated to?

RESPONSE: Cox objects that the request is vague as to time, calls for information that is covered by the attorney-client privilege and/or work product doctrine, and is argumentative.

RESPONDENT: Cox Legal

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The following requests pertain to the Testimony of Tisha Christle filed 4/5/06:

STF 12.12 Referring to page 3, lines 20-22 - During any of your discussions with Shea, did you ask for examples of other locations where a MUE arrangement had been used legally? If the response is yes, what examples were offered? If the response is no, why not?

RESPONSE: Ms. Christle does not recall whether or not she requested this information. Ms. Christle recalls that she was told by Shea that the MUE arrangement had been found to be legal, either in Indiana or Illinois.

RESPONDENT: Tisha Christle

COX ARIZONA TELCOM, LLC
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STF 12.13 Referring to page 3, lines 20-22 – During your discussions with Shea or review of the documents pertaining to Vistancia, did anyone within the Cox family of Companies ask you for examples of other locations where a MUE arrangement had been used legally? If yes, please identify all such individuals and their job function.

RESPONSE: Cox objects that the request is vague and ambiguous as to the meaning of “Cox family of Companies,” is vague as to time, and may call for information that is covered by the attorney-client privilege and/or work product. Notwithstanding this objection and without waiving it, Ms. Christle does not recall any such non-privileged communications with Cox employees during the relevant time period.

RESPONDENT: Tisha Christle

COX ARIZONA TELCOM, LLC
RESPONSES TO
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STF 12.14 Referring to page 3, lines 20-22 – During your discussions with Shea or review of the documents pertaining to Vistancia, did anyone within the Cox family of Companies provide you with, or express knowledge of, examples of other locations where a MUE arrangement had been used legally? If yes, please identify all such individuals and their job function.

RESPONSE: Cox objects that the request is vague and ambiguous as to the meaning of “Cox family of Companies,” is vague as to time, and may call for information that is covered by the attorney-client privilege and/or work product. Notwithstanding this objection and without waiving it, Ms. Christle does not recall any such non-privileged communications with Cox employees during the relevant time period.

RESPONDENT: Tisha Christle

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STF 12.15 Referring to page 4, lines 10-14 - The original draft agreements between Cox and Shea provided for a \$2 million capital contribution from Shea to Cox when the easements for telecommunications were public. The final agreements between Cox and Shea provided for a \$3 million capital contribution from Shea to Cox and a payment of \$1 million from Cox to Shea when the easements for telecommunications were a MUE. Since the \$1 million increase in capital contribution offsets the \$1 million required for access to the MUE, was it your understanding that the effect of the final agreements that Cox received access to the MUE at no cost to itself? Please explain your response with specificity.

RESPONSE: Cox objects that the request is argumentative. Ms. Christle has explained her understanding in her direct testimony. See also Response to STF 11.8.

RESPONDENT: Cox Legal